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Human rights bodies and mechanisms

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the sixth session of the Forum on Business and Human Rights

Note by the Secretariat

The present report, prepared in accordance with Human Rights Council resolutions 17/4 and 35/7, describes the proceedings and thematic recommendations of the sixth session of the Forum on Business and Human Rights, held from 27 to 29 November 2017. It should be read together with the Forum programme, session concept notes, statements, and session web recordings, which are available on the Forum website.[1]

[1] www.ohchr.org/2017/ForumBHR

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I. Introduction

1. Since its first session in 2012, the Forum on Business and Human Rights has become the world's biggest event on business and human rights. It was established by the Human Rights Council in its resolution 17/4, in which the Council also endorsed the Guiding Principles on Business and Human Rights: implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex). The mandate of the Forum is to discuss trends and challenges in the implementation of the Guiding Principles, to promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, and to identify good practices.

2. The Forum is organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and guided and chaired by the Working Group on the issue of human rights and transnational corporations and other business enterprises. The present report was prepared by the Working Group in accordance with Human Rights Council resolution 35/7, in which the Council invited the Working Group to submit a report on the proceedings and thematic recommendations of the Forum to the Council for its consideration. In the present report, the Working Group provides an overview of key observations and messages emerging from the Forum.

3. The programme for the 2017 Forum included two plenary sessions and more than 80 parallel sessions, the latter organized by the Working Group, OHCHR and external organizations on the basis of extensive consultations and some 130 submitted session proposals.

4. Under the theme of "Realizing access to effective remedy", participants in the Forum examined gaps and shortcomings in current efforts, and emerging good practices and innovations to ensure access to effective remedy. Multi-stakeholder discussions covered the full range of mechanisms envisaged under the third pillar of the Guiding Principles: State-based judicial mechanisms, State-based non-judicial grievance mechanisms, and non-State-based grievance mechanisms.

5. The Forum programme included a number of sessions dedicated to specific issues, trends and challenges in implementing all three pillars of the Guiding Principles. In addition to the dialogue held at the Forum, the Working Group facilitated a blog series to inform Forum discussions.[1]

6. The Forum was attended by more than 2,500 participants from 130 States, from a wide range of categories (see table below).

Category of participating stakeholders (%)	*Total*
Academic	14
Private sector (business enterprises, business/industry associations, consultancies, law firms, investors)	26
Civil society organizations, affected stakeholders, trade unions and indigenous peoples' groups	35
Multi-stakeholder initiatives	3
National human rights institutions	2
Member or Observer States	10
United Nations/intergovernmental organizations	7
Other	2

7. Participation has increased significantly since the first Forum in 2012, when around 1,000 people registered. Private sector representation has also witnessed steady growth. Some 55 per cent of registered participants were women.

[1] See http://blog.journals.cambridge.org/tag/wgbizhrs/.

II. Key messages from the opening plenary session

8. The Forum was opened by OHCHR and the Working Group. In their opening remarks, they underlined the fact that the growing interest in the Forum reflected the importance of the business and human rights agenda. They reiterated the importance of the theme of the 2017 Forum, noting that, while the first and second pillars of the Guiding Principles had received considerable attention since 2011, progress on pillar three — realizing access to remedy for victims of business-related human rights impacts — had been lagging.

9. Discussions were set in the broader context of the seventieth anniversary of the Universal Declaration of Human Rights, and the overarching vision of realizing dignity for all humanity. Standing up for human rights and making progress on realizing access to remedy for those adversely affected by business activity would make a real difference in advancing towards this vision.

10. The Working Group highlighted the progress made in stated commitments to translate the Guiding Principles into action: examples of national action plans and corporate policy commitments across regions; promising regulatory developments, such as the French "duty of vigilance" law; the recognition by Group of 20 (G-20) leaders of the importance of the Guiding Principles for sustainable supply chains; and the broad support from all stakeholder groups for the theme of "access to remedy" of the 2017 Forum, showing that dialogue on business and human rights had matured.

11. As part of its efforts to focus more attention on access to remedy, the Working Group had dedicated its latest report to the General Assembly to the issue of access to remedy (A/72/162). Its overall recommendation was that States should establish effective remedial mechanisms, both judicial and non-judicial, and address barriers in their access to those mechanisms; rights holders should be at the heart of the remedy process, and due attention paid to the diverse experiences of rights holders, including the central importance of adopting a gender lens; freedom of fear from victimization and attacks on human rights defenders should be addressed; and remediation efforts should be effective in both process and outcome.

12. The subsequent keynote plenary panel featured a group of prominent women leaders from different backgrounds. They addressed the topic of access to remedy further, and also an array of key issues confronting the global business and human rights agenda:

(a) The need for States and businesses to demonstrate stronger leadership. Examples of State leadership included recent efforts in Indonesia to protect human rights and to fight forced labour and trafficking in the fisheries sector, and regulatory developments, such as the Modern Slavery Act in the United Kingdom of Great Britain and Northern Ireland, and the "duty of vigilance" law in France, which had contributed to greater corporate attention to the expectation that companies exercise human rights due diligence. At the same time, regulations are only as good as their implementation. Examples of corporate leadership included steps taken towards greater transparency in supply chains, including by taking advantage of technological solutions to gather more intelligence about risks and impacts, adopting business models that embed respect for human rights in policies and procedures, and collaborating with civil society organizations to strengthen both preventive measures and accountability;

(b) The connection between corporate respect for human rights and inequality. Growing inequality is at the origin of human rights violations and abuse, and the erosion of democracy; improving conditions for workers at the bottom of the supply chain, with special attention to the situation of women, temporary workers and migrants, is critical;

(c) Responsible tax practice. One key concern is that corporate "tax dodging" had a negative impact on the ability of Governments to realize economic and social rights (including the funding of schools and health services), with a disproportionate negative effect on the poorest and most vulnerable in society. Companies should align behind responsible tax practices as a critical component of efforts contributing to the achievement of sustainable development for all;

(d) The increase in attacks on those who speak up against corporate impact on human rights and shrinking civic space. As an increasing number of States were introducing restrictions on civic space, in 2016 the number of attacks against and killings of human rights defenders speaking up against business-related impacts continued to rise. Two opposing trends were highlighted: on the one hand, there were more examples of positive engagement by business to stand up for civic freedoms or in defence of individuals; on the other, collusion between abusive government actors and business interests remained a major challenge. There was also often a lack of coherence between corporate commitments on social issues and their lobbying efforts, which may undermine human rights protection. With regard to Governments, it was recommended that they include protection of human rights and environmental defenders in their national action plans on business and human rights, and take concrete steps to address the problem of criminalization and other forms of retaliation targeting defenders. Business actors should on their side not use criminal and defamation laws and avoid strategic lawsuits against public participation ("SLAPPs") to silence people who raise concerns about adverse effects of business activities. A human rights defender speaking in the panel gave a simple yet powerful piece of advice to business: listen to those who raise concerns about human rights risks and impacts. One of the best ways to understand the situation on the ground — and be in a position to address risks proactively — is to talk to civil society, workers and local community representatives, and to listen to critical voices;

(e) New approaches to empower communities and workers. Experience suggested that community-based human rights due diligence approaches enable communities to do their own human rights impact assessments, which helped to address power imbalances and to strengthen meaningful dialogue. This was also an important factor for the effective operation of local grievance mechanisms. Empowering women — both at the workplace and in the community — was identified as a key issue;

(f) Actions needed to make progress on access to remedy. It was noted that government leadership is essential, reinforced by a stronger push and pressure from the United Nations and civil society. The need to end the criminalization of worker representatives and human rights defenders was reiterated, and seen as a key factor in making progress in realizing access to remedy for victims. With regard to the role of business, when people are adversely affected by business operations, remediation should be based on meaningful engagement with the stakeholders affected and be in line with best international practice.

III. Realizing access to effective remedy

A. Exploring elements of effective remedy: perspectives of affected stakeholders

13. Participants in the Forum explored elements of effective remedy from the perspective of an affected stakeholder. Victims and their representatives from different regions shared experiences from the ground. Accounts were given by a wide range of stakeholders, including community representatives, migrant workers, indigenous peoples, human rights defenders and organizations working with children.

14. Discussions included case studies from Australia (with regard to Manus Island), Bangladesh, Brazil, Chile, Colombia, the Democratic Republic of the Congo, India, the Occupied Palestinian Territory and Zimbabwe, involving companies from Australia, Bangladesh, Belgium, Brazil, Canada, China, India, the Netherlands, the Republic of Korea and Switzerland. One general message was that the third pillar had generally been overlooked and that initiatives by States, businesses and civil society to address negative effects had fallen short, and effective oversight was lacking.

15. One overall observation made by the Working Group and other stakeholders was that, for remedy to be effective and meaningful for victims, both the process and the outcome should take the perspectives of victims into account. Another resounding message was that all companies should meet their responsibility to provide for or contribute

meaningfully to effective remedy, in accordance with the Guiding Principles, when they cause or contribute to human rights abuse.

16. The issue of power imbalances was a recurring theme. Lack of information and resources, and barriers caused by travelling distances and linguistic and cultural differences tended to limit the capacity of victims to engage in effective dialogue. The need for open dialogue between the parties and the independence of the process were highlighted as basic requirements for meaningful engagement with victims.

17. Against the background of power imbalances, one idea proposed by the Working Group and discussed at the Forum was a pro bono network of lawyers, aimed at facilitating greater access to legal support for victims.

B. National action plans and the third pillar

18. Participants in the Forum recalled Human Rights Council resolution 26/22, in which the Council encouraged all States to take steps to implement the Guiding Principles, including to develop national action plans on business and human rights or other frameworks, and to submit annual reports on the implementation of their commitments. Participants highlighted the recent progress made in this area, while a number of States — Belgium, Brazil, Chile, Colombia, Czechia, France, Germany, Greece, Italy, Japan, Mexico, the Netherlands, Norway, Poland, Slovenia, Spain, Switzerland and Thailand — provided an update on their national action plans and other relevant initiatives.[3] The Working Group was encouraged by the increase in the number of States that had either developed or committed to developing a national action plan, and also by the commitment made by the G-20 leaders in 2017 to work towards developing such plans.[4]

19. According to the Working Group, given the open-ended and evolving character of the process involved, national action plans had to be updated regularly. It highlighted also the need for an open and inclusive process involving all stakeholders (including victims and their representatives, labour unions and human rights defenders), and for national baseline assessments to ensure that national action plans were tailored to address the most pressing business-related human rights challenges in a given context.

20. The Working Group, business associations and civil society speakers pointed out that existing national action plans were limited in terms of action to improve access to remedy. Both existing and forthcoming plans therefore had to address substantial gaps and comprise more specific, measurable, achievable and time-bound actions and objectives, and effective follow-up systems.

C. Judicial remedy

21. Access to judicial remedies was the backbone of the third pillar of the Guiding Principles. A central question for Forum discussions was how to increase the effectiveness of domestic public law regimes, with guidance by OHCHR (see A/HRC/32/19 and Add.1) and the Working Group (see A/72/162) providing a central reference. Participants highlighted the fact that companies are rarely subject to law enforcement with regard to administrative liability or other sanctions, the result of a number of challenges, such as lack of enforcement and weak domestic public law regimes. Discussions on domestic public law regimes focused on how to ensure effective deterrence and effective remedy, and how States could approach legal liability, and also on a range of well-known barriers to access to justice, many of which are linked to broader challenges to the rule of law. Key points included the following:

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[3] See www.ohchr.org/EN/Issues/Business/Forum/Pages/2017Statements.aspx.

[4] Council of the European Union, G20 Leaders' Declaration: "Shaping an interconnected world", 8 July 2017.

(a) Although most States have legal systems capable of handling corporate wrongdoing, there are many different approaches to these issues, such as attribution of criminal liability; lack of enforcement is a major issue;

(b) Corporate complicity is a key concept for the attribution of liability; most States that recognize corporate liability also recognize corporate complicity;

(c) Legal regimes relevant to business respect for human rights are generally not framed in human rights terms, resulting in problems such as outcomes, where the only applicable sanctions (such as a fine) might not be commensurate with the severity of the abuse or the harm caused;

(d) Resources available to prosecutors are limited (often accompanied by a lack of political will) to pursue companies or company representatives involved in alleged human rights abuses, and resources are even more limited when the harm has been inflicted in other jurisdictions.

22. Participants in the Forum examined how to overcome challenges and increase accountability for cross-border corporate human rights crimes by examining the life cycle of a criminal prosecution. Discussions highlighted recent work and initiatives to address existing accountability gaps, in particular:

(a) The Corporate Crimes Principles,[5] which build on the experiences of legal practitioners and prosecutors in combating corporate crimes actively;

(b) The study of the Working Group on best practices of cross-border cooperation between law enforcement agencies on business-related human rights cases (A/HRC/35/33), which confirmed that there was not a lot of practice in prosecuting such cases. The Working Group found, however, that in areas such as environmental protection, anti-corruption and anti-trafficking, there was good practice on which to build. In addition to formal mechanisms, it highlighted the importance of informal networks and cooperation, such as joint investigation teams. With political will, such practices could be replicated for business-related human rights cases.

23. Participants highlighted the key role of civil society organizations, including with reference to the recognition by the International Criminal Court that civil society plays an important part in collecting evidence, and the role of investigative journalism in exposing offshore tax avoidance schemes, money laundering and bribes (such as the investigations on the Panama Papers and the Paradise Papers by the International Consortium of Investigative Journalists). At the same time, both non-governmental organizations and prosecutors cautioned that evidence collected by the organizations had to follow the principle of due process and principles of justice; otherwise, prosecutors may not be able to rely on them.

24. The safety and protection of whistle-blowers and civil society representatives was another main concern, as underlined by the recent deaths of investigative journalists, representatives of non-governmental organizations, United Nations field workers and human rights defenders. Prosecutors participating in the discussions stressed that collaboration with whistle-blowers and civil society actors had to be based on the protection of anonymity and safety. From the perspective of judges, it was noted that, often, the problem that courts face is not the lack of evidence, but rather the lack of the conceptual framework in which the evidence is considered, particularly the challenge of piercing the corporate veil. In this regard, participants noted that the concept of "corporate identity" had been introduced to promote risk-taking and economic development, not to act as a shield from accountability or liability. Judges therefore have to have the courage to apply responsibility right up to the head organization. With regard to existing legal and practice limitations in the application of extraterritorial jurisdiction by the judiciary, public opinion could bring about rapid change, as witnessed in the areas of anti-bribery/anti-corruption and anti-trafficking.

[5] See www.commercecrimehumanrights.org.

25. During the discussions held on an international legally binding instrument, participants referred to the draft "elements" issued in 2017 to serve as a basis for negotiations among States. The substantive points suggested for a treaty to bridge existing gaps included:

- Civil liability in home countries of transnational corporations
- Barriers to justice related to the *forum non conveniens* legal doctrine
- Reversing the burden of proof in favour of victims
- Legal requirements for companies to exercise human rights due diligence in accordance with the Guiding Principles
- Barriers to class actions
- Uneven compensation standards (and consequently potentially skewed incentives for transnational corporations) across regions
- Legal assistance to victims

26. A range of different views on whether an international instrument would be the best way forward in closing the current accountability and remedy gaps was represented.

27. With regard to legal developments relating to access to remedy in cases involving transnational corporations, Forum participants highlighted developments in some jurisdictions, such as in English law regarding parent company liability, where this principle had been invoked in a handful of cases in order to frame access to remedy. Claims had been brought against parent companies domiciled in the United Kingdom of Great Britain and Northern Ireland, where jurisdiction depended on whether duty of care of a parent company in relation to actions of a subsidiary could be imposed. One question discussed was whether corporate reporting on human rights risks could increase exposure to the risk of litigation or actually demonstrate that due diligence had been exercised.

28. Another example centred on laws in North America, which could provide — though not in a straightforward manner — avenues for remedy, all of which predated the Guiding Principles. In the United States of America, in addition to the Alien Tort Statute, the extraterritorial reach of which was limited by the Supreme Court in 2013 (in *Kiobel v. Royal Dutch Petroleum*), other avenues included the Trafficking Victims Protection Reauthorization Act (civil and criminal liability in trafficking and forced labour) and the Global Magnitsky Act (sanctions against human rights abusers in other countries). In Canada, a number of cases had been brought against Canadian mining companies relating to human rights abuses committed in third countries, some of which were moving to trial as tort cases. Historically, such cases were rejected on grounds of *forum non conveniens*, but the judicial interpretation was changing.

29. It was suggested that regulations such as the Modern Slavery Act in the United Kingdom, the draft anti-slavery act in Australia and the non-financial reporting directive of the European Union did not by themselves improve access to remedy, as this was not their purpose. They did, however, play an important preventive role by promoting more effective risk management through human rights due diligence.

D. Strengthening State-based non-judicial remedy

30. Participants discussed the policy implications of findings made in a discussion paper prepared in the context of the OHCHR Accountability and Remedy Project II,[6] which focused on improving the effectiveness of State-based non-judicial mechanisms.

31. It was generally agreed that State-based non-judicial mechanisms provided specific benefits, such as a reduction in certain financial barriers prevalent in legal proceedings, and greater accessibility and faster resolution. It was also suggested, however, that despite these

[6] See www.ohchr.org/EN/Issues/Business/Pages/ARP_II.aspx.

advantages, positive examples were actually scarce, and that these mechanisms could lead to ineffective results owing to the lack of sanctioning power. It was noted that:

(a) The most successful State-based non-judicial mechanisms tended to be those that were highly specialized; this could lead, however, to a fragmentation of remedies in complex cases;

(b) Only a fraction of non-judicial mechanisms had extraterritorial reach, and had a weak level of enforceability;

(c) Most State-based non-judicial mechanisms also had a mandate focusing on the prevention of adverse effects, which might make them less effective as tools for accountability.

32. One observation made on recent trends was that several States had committed to review how State-based non-judicial grievance mechanisms work in relation to business-related human rights impacts in general, and to strengthen the national contact point system of the Organization for Economic Cooperation and Development (OECD) in particular.

33. In several sessions, participants addressed the national contact point system and its peer review process. It was a common understanding that, despite the need for further action, national contact points are potentially an important avenue for access to remedy in many situations (that is, when there is a link to countries adhering to the OECD Guidelines for Multinational Enterprises). One of the challenges highlighted was the lack of awareness about national contact points among affected stakeholders (communities, non-governmental organizations, workers and unions) and business. It was suggested that the contact points could complement judicial mechanisms by providing advantages, such as greater accessibility, faster processes and lower costs; a dialogue-oriented system, fostering mediation if the parties agree; and quasi jurisprudence, at least in some countries (such as France).

34. One case study where the outcome had been deemed successful by stakeholders featured during Forum discussions. It had been filed in 2015 with the national contact point in the Netherlands by 168 factory workers previously employed by the Congolese subsidiary of the Heineken company, Bralima, for violations of labour rights during the civil war in eastern Democratic Republic of the Congo, from 1999 to 2002. Success factors included:

- No statute of limitations
- Acknowledgement that remedy was the reason behind the national contact point system
- Clear incentives for companies to participate constructively
- Accessibility maximized by conducting local fact-finding and mediation, translating documents, and covering complainants' travel costs
- In the Netherlands, national contact point operated transparently and did not apply overly strict confidentiality restrictions; media attention also helped the case

35. In discussions on the ongoing peer review process of national contact points, all stakeholders — the national contact point under review, peer reviewers, civil society organizations, trade unions and business organizations — highlighted the advantages of the process. The process offered an opportunity for raising awareness and deepening understanding of the functioning of national contact points, and for sharing learning and improving accountability. The peer review process concerning the national contact point in Belgium was identified by non-governmental organizations as a good example of transparency on how recommendations were being addressed. Challenges nonetheless remained, such as in the assessment of its impact, and the lack of clarity with regard to how external inputs are considered in the review process. Non-governmental organizations found that the results in terms of facilitating access to remedy had not been taken properly into consideration.

36. National human rights institutions were another important group of actors in the area of State-based non-judicial remedy and business and human rights. With more than 40

national institutions from all regions attending and two dedicated sessions on their role, the Forum was able to shed light on their contribution to access to remedy, in particular through their own complaint-handling, mediation and investigative functions.

37. One key recommendation for improving the effectiveness of national human rights institutions, and for improving broader coherence in this area, was the call for closer collaboration among stakeholders to enhance positive results, greater capacity-building efforts (including through closer engagement with the OECD system), and more peer-to-peer reviews to share experiences. Another recommendation was the need to equip national institutions with a mandate to receive or investigate business-related human rights complaints, and to ensure their independence and that they are allocated sufficient resources.

E. Making operational-level grievance mechanisms work

38. Forum discussions on how to make operational-level grievance mechanisms work in practice were grounded in the effectiveness criteria for non-judicial mechanisms, set out in Principle 31 of the Guiding Principles. An overall point was that such mechanisms had to be part of a larger "ecosystem" of preventative and remedial mechanisms, including company frameworks. A key challenge that was repeatedly raised was the asymmetries of power in situations characterized by lack of or weak governance.

39. Attention was drawn to a review of international and national surveys by the International Commission of Jurists showing that only a small percentage of companies had some kind of operational grievance mechanism. The amount of guidance from industry level in certain sectors was, however, increasing. The Commission was currently exploring how to improve the effectiveness of operational-level mechanisms against the criteria set out in the Guiding Principles, with a focus on what the scope of such mechanisms can and should be, and on ways to address asymmetries in power, and interfacing with other types of grievance mechanisms.

40. With regard to successful worker-oriented approaches, the Fair Food Program initiated by the Coalition of Immokalee Workers, representing agricultural workers in the United States of America, was highlighted.[7] According to the experience gained under the initiative, to be effective, complaint resolution systems should be worker-initiated, based on the protection of workers, accessible, trusted, competent and timely.

41. Companies and industry associations in different sectors (including agriculture, apparel, consumer goods, electronics, mining, and oil and gas) that had set up or piloted operational-level grievance mechanisms found that:

(a) Mechanisms should be part of a human rights due diligence approach, providing useful early warning, which helped companies to assess risks to people;

(b) Tracking effectiveness and monitoring processes is critical;

(c) Technology solutions can help to improve access to remedy for grievances in supply chains;

(d) Brands should play a role in creating trust and transparency with suppliers, to help them to understand why a grievance mechanism is important;

(e) Exercising effective leverage in support of better access to remedy, including the use of contracts, should be further explored;

(f) Operational-level mechanisms cannot and should not deal with criminal investigations, although companies should support and collaborate with the relevant judicial mechanism, including by facilitating the gathering of evidence;

(g) With regard to worker engagement, third-party grievance mechanisms can be a relief valve if trust is low or absent, although social dialogue is preferable;

[7] See www.fairfoodprogram.org.

(h) There is no "one-size-fits-all" solution, and mechanisms oriented to local communities should take their perspectives into account; what works at the operational level in a formal, organized environment does not necessarily work in a supply chain;

(i) The legitimacy of a mechanism is directly related to how it was designed and who is involved. Government engagement is important to ensure connection with local governance and an interface with other grievance mechanisms. Engagement with local industry associations is also important.

42. Further points relating to the role of Governments were drawn from the example of the approach taken by Canada to mining companies operating abroad. One important aspect was the issue of leverage. A lesson from the Canadian context was that the Government may recommend sanctions if a company fails to engage when human rights complaints arise. This can include the withdrawal of economic support and trade advocacy support, which may be a significant factor for keeping companies at the table.

43. Participants also addressed the role of trade unions and access to remedy for women in supply chains. Key points included the following:

(a) As underlined in the Guiding Principles, operational-level grievance mechanisms should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes;

(b) Where trade unions are present, worker empowerment is heightened and social dialogue more effective;

(c) In certain sectors (such as fisheries and shipping), workers have extremely limited access to grievance mechanisms;

(d) As demonstrated by a case study of the horticulture sectors in Kenya and Uganda, the introduction of collective bargaining, new grievance mechanisms and women's committees helps to reduce the incidence of sexual harassment. Lessons learned from this context showed that the introduction of a company policy of zero-tolerance for sexual harassment and soft skill training to empower women workers contributed further to lower incidences of sexual harassment.

F. Policy coherence

44. Policy coherence at various levels is a recurring theme in Forum discussions. At the Forum in 2017, the issue was addressed both at the global governance level and in relation to State-level implementation, with a focus on the third pillar.

1. Access to remedy in global governance frameworks: recent developments and innovations

45. Discussions on supporting access to remedy in accordance with the Guiding Principles in global governance frameworks focused on, inter alia, developments in the OECD system, in the light of the incorporation of key components of the Guiding Principles into the OECD Guidelines for Multinational Enterprises. The performance of OECD national contact points was a key issue. Participants noted that 50 per cent of complaints handled by the contact points related to human rights. The challenges faced included the fact that two adhering States did not yet have a national contact point, while the contact points in 10 other States did not function. On the positive side, OECD ministers had made a commitment to improve contact points, all of which were expected to be up and running by 2021. This commitment had also been expressed in recent declarations of the Group of Seven and the Group of 20.

46. Civil society representatives highlighted the fact that remedy remained rare, even though it was the main reason for establishing national contact points. According to a review conducted by non-governmental organizations, remedy is available in only about 15 per cent of cases. A key recommendation was for national contact points to take into account the asymmetry of power between transnational corporations and affected stakeholders.

47. In their discussions, participants highlighted the revision completed by the International Labour Organization (ILO) in 2017 of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, to align it with the Sustainable Development Goals and the three pillars of the Guiding Principles. With regard to the third pillar, one key issue was the obligation of Governments to ensure that workers have access to remedy for human rights abuses involving transnational corporations. The role of trade unions in human rights due diligence processes was highlighted, as was the need for access to remedy to be tackled systematically, not only in a voluntary way.

48. A recurring topic at the Forum is the functioning of independent accountability mechanisms of international financial institutions. A critical point made at the Forum in 2017 was the importance of the independence of such mechanisms to allow them to address effectively any grievances raised by communities affected by projects funded by international financial institutions. Transparency, trust-building and awareness-raising with regard to accountability mechanisms and capacity-building to empower communities in their access to them were considered key success factors. One remaining challenge was the lack of coherence between international financial institutions and associated accountability mechanisms, which are often more in tune with realities on the ground.

2. Implications of the international investment regime

49. More than 3,000 international investment agreements regulated foreign direct investments, including provisions for arbitration or dispute settlement between Governments and private investors. While the international investment regime offers protection for investors, however, access to remedy for affected stakeholders is elusive. During discussions, Forum participants highlighted areas in need of reform, aimed at, for example, safeguarding the right to regulate, reforming investment dispute settlement and ensuring responsible investment. The need for a better understanding of the impact that investment agreements have on human rights was noted.

3. The "State-business nexus" and access to the remedy pillar

50. Participants in the Forum addressed the role of the State as an economic actor, and the integration of human rights in the management of export processing zones and export credit agencies.

51. Export processing zones are essentially State-owned enterprises with their own legal infrastructure. In a study on 120 export processing zones, the United Nations Conference on Trade and Development had found that, in such zones, "red tape" was typically eliminated and, in some cases, labour inspections and the implementation of environmental standards were more effective. This showed that the integration of standards to manage risks to workers and communities was possible in export processing zones, even though huge differences existed.

52. Some export credit agencies had begun to integrate the Guiding Principles into their due diligence processes, such as those in the Netherlands and Norway. Experience had shown that the integration of the Guiding Principles could improve the focus on disclosure and effective stakeholder engagement in projects supported by export credit agencies. One issue that still required more attention, however, concerned financial institutions beyond export credit agencies: how to effectively exercise leverage to support access to remedy when the financial institution is linked to — but not causing or contributing to — human rights harm.

G. Strengthening the third pillar in multi-stakeholder initiatives and platforms

53. Multi-stakeholder initiatives are generally perceived to hold a lot of potential for improving the protection of human rights in business activities and supply chains, even though there is also broad agreement that most of them have not met their potential, in particular when addressing the third pillar of the Guiding Principles. Participants noted that few multi-stakeholder initiatives had grievance systems in place (one figure suggested that

only 40 per cent did), and that international human rights standards in general were not systematically integrated. Examples of multi-stakeholder initiatives currently grappling with how to improve access to remedy included the Fair Labor Association, the Fair Wear Foundation, the Global Network Initiative, Guías Colombia (focusing on business and human rights in Colombia) and the International Code of Conduct for Private Security Service Providers' Association.

54. Participants in the Forum also examined the role of multi-stakeholder engagement and dialogue at the local level, and its role in strengthening access to remedy for affected stakeholders. One example was from the establishment of an independent problem-solving service for communities affected by mining operations in South Africa. In their discussions, participants indicated that independent mechanisms to resolve problems and grievance mechanisms could be hugely valuable in contexts where there [i.] a significant trust deficit between companies and communities. Company-led grievance mechanisms were often underutilized or not designed with the needs of the community in mind. Legal mechanisms were often out of the reach of poor communities and may not be suited to smaller grievances. Independent mechanisms could play a complementary role in such contexts. Participants highlighted several critical success factors, including the levelling of unequal power dynamics; the need to focus on process as much as outcome; the use of facilitated dialogue; and the need for mechanisms to be truly independent and credible.

55. A case study of the Thilawa Special Economic Zone in Myanmar saw a range of stakeholders share their experiences of addressing grievances. The discussions held on multi-stakeholder engagement generally highlighted the role that the Forum on Business and Human Rights itself could play in this context. Participants noted that the Forum, focusing on different industrial sectors and country contexts, presented a unique opportunity for people from around the world to come together and learn from each other's work. As an example, important connections had been made between stakeholders in South Africa and the Coalition of Immokalee Workers based in the United States of America with regard to their experience with the Fair Food Program and the complaint resolution system. Meaningful dialogue between different parties in complex contexts was never easy, but was still possible when stakeholders were committed to addressing problems together.

56. Another issue concerned ensuring remedies for workers and their families in the aftermath of accidents in industrial supply chains. Collective action involving local and global business, unions and the Government was seen as critical for success. The Rana Plaza compensation agreement had united everybody (local and global stakeholders) in a single framework for delivering compensation, even though the practical challenges, not least with fundraising, were considerable. The lesson to be learned was that it would not have been possible if all actors had not been involved. At the same time, ad hoc solutions to provide compensation were complex; a better approach would be to have effective systems of social security in place; workers and non-governmental organizations stressed, however, that against a background of limited State capacity to enforce relevant laws in many jurisdictions, such ad hoc measures to compensate victims were necessary. Participants also stressed that all efforts should be based on relevant ILO standards, and that multi-stakeholder efforts should take into account the concerns of all workers, not only those in export-oriented enterprises.

57. The role of business and industry associations was also addressed. One key point was that no company alone can plug current remediation gaps, including those that exist across global supply chains. Joint industry action can support better human rights due diligence and capacity-building, and strengthen leverage with regard to competitors, suppliers and Governments. Joint action to enhance access of people to remedy for adverse impacts should be seen as a "pre-competitive" issue.

II. Innovations in dispute resolution and leverage of third parties

58. The Forum agenda included discussions on innovative and collaborative approaches, and the role of third parties in a position to shape corporate practice. One discussion focused on gaps in access to remedy that could be addressed through "Hague style"

innovations involving a smart collaborative mix of various approaches to dialogue, mediation and arbitration. This included the creation of an access to remedy fund aimed at strengthening the institutions and processes for ensuring access to justice for victims of human rights abuse in which business enterprises played a role. The aim would be to solicit funds from private entities and individuals to support specific projects designed to remove institutional barriers to remedy and to strengthen dispute resolution processes. Another proposal was the creation of a business and human rights arbitration panel available either to victims of human rights violations who wish to bring claims against businesses, or to resolve disputes involving human rights-related claims between commercial parties (for example, where a supplier fails to comply with certain contractually imposed human rights obligations).

59. Another discussion centred on the role of effective mediation in more effectively addressing community grievances with regard to business-related human rights impacts, and consequently contributing to sustainable development for the community. The main lessons learned described by independent accountability mechanisms, non-governmental organizations and business enterprises included the need for capacity-building on all sides; the need for joint fact-finding or external expertise trusted by both sides; clear ground rules accepted by both sides; the identification of legitimate representatives of victims; the proactive inclusion of women from affected communities (if they are not included at the table); recognition by business enterprises that conflict is not in their interest, and that their relationship with a community should be seen through a long-term lens; and the effectiveness of operational-level grievance mechanisms in addressing grievances early and before they escalate.

60. In another discussion, participants focused on the role of corporate counsel and law firms, which among other things addressed the role of the "wise counsellor" and the question of pro bono legal support to victims. With regard to the former issue, participants emphasized the importance of the Practical Guide on Business and Human Rights for Business Lawyers of the International Bar Association.[8] They noted that corporate lawyers could and should play a proactive role in advising their corporate clients on human rights due diligence, which ultimately would be beneficial to corporate governance and lead to better supply chain and risk management. Bad human rights due diligence and failure to take a role in addressing legitimate calls for remedy would eventually come back to haunt a company. The role of a wise legal counsellor would be to put information on human rights abuse and risks in context. With regard to the importance of strengthening pro bono legal support to communities, participants noted that there was a great need to address current inequality of legal arms between communities and transnational corporations. There was also a need for lawyers who are both independent and competent in business and human rights-type litigation. Such legal support was scarce, and communities might not have the resources to engage competent lawyers where they can be found. Forum participants welcomed an idea proposed by the Working Group of exploring a pro bono network, but also highlighted a range of practical challenges. One critical point was the need to build capacity at the local level and to tap into local legal expertise. There was also a need to map and broaden existing networks of pro bono legal support provided by, for example, existing human rights clinics, and to facilitate knowledge-sharing.

IV. Action on all three pillars

A. State action

61. The Working Group and other stakeholders acknowledged that legal developments in several jurisdictions had the potential to create positive change. It was also noted — as stressed in the Guiding Principles — that States should not assume that businesses invariably prefer or benefit from State inaction, and that they should consider a smart

[8] Available from www.ibanet.org/LPRU/Business-and-Human-Rights-Documents.aspx.

combination of measures, including effective regulation. Several recent regulatory and policy developments by States beyond national action plans were highlighted:

- Laws with broad human rights due diligence provisions for companies of a certain size (the "duty of vigilance" law in France)
- Laws geared towards improving transparency with regard to how companies address specific human rights risks (Modern Slavery Act in the United Kingdom, and forthcoming modern slavery act in Australia; forthcoming due diligence requirements with regard to child labour in the Netherlands)
- Policies aimed at addressing the impact on human rights in specific sectors (ministerial directive on expected conduct of business enterprises in the fisheries sector with regard to human rights and fighting forced labour and trafficking in Indonesia)
- Policies to strengthen corporate reporting on social risks and human rights due diligence in supply chains and foreign direct investments through industry initiatives (China)
- Facilitating multi-stakeholder sector-based platforms for identifying and addressing human rights risks (sector agreements in the Netherlands; sector dialogues in Germany) or issue-specific multi-stakeholder processes (such as human trafficking and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, co-chaired by Australia and Indonesia)
- Warnings of introduction of mandatory human rights due diligence if companies fail to take necessary action voluntarily (Germany)

B. Corporate respect for human rights in practice

62. Discussions held during the Forum touched on different aspects of how companies were implementing the second pillar of the Guiding Principles (the corporate responsibility to respect) and what was needed to bring about faster change. Participants concluded that:

(a) Effective change is about addressing problems faced, learning from them and improving for the future;

(b) Business and human rights is an issue that should not be confined to the sustainability or compliance department, but addressed throughout the organization to ensure coherence between all business operations;

(c) There is a need for internal training to sensitize the organization;

(d) Suppliers should be closely monitored to ensure that they comply with their commitments to codes of conduct; mutual, ongoing engagement with suppliers is one possible way for their successful implementation;

(e) Leadership and company culture are essential in initiating and executing respect for human rights;

(f) It is a continuous journey of learning, where the connection between business and human rights needs to be "demystified" and explained in a way that everyone in the business and value chain can understand.

63. Time was allocated in discussions to reflect on progress made in recent years and to explore emerging trends and developments. Speakers from different backgrounds recognized that some progress had been made in, inter alia, regulatory frameworks (particularly with regard to the issue of modern slavery and to transparency). Major challenges nonetheless remained in the implementation of the Guiding Principles:

(a) There is still little concrete commitment from businesses to respect human rights beyond a relatively small group of global corporations;

(b) Even companies that have adopted policy commitments in line with the Guiding Principles demonstrated gaps in operationalization at the local level;

(c) The complexity of monitoring large supply chains;

(d) Access to effective remedy is still a challenge for most companies;

(e) Human rights issues in the large informal economy that are not covered by the formal regulations are largely neglected.

64. In order to plug the gaps, participants drew attention to the need for:

- A combination of regulatory tools
- Both binding agreements and more flexible and pragmatic sources of governance
- Clear expectations and continuous scrutiny by Governments requiring all companies, regardless of their size, to implement the Guiding Principles
- Government guidance and support for small and medium-sized enterprises, including by means of peer and sectorial platforms
- Consumers and investors to call for systematic changes
- In the case of investors, frameworks that reward companies that address human rights risks, beyond simply having policies in place
- New technologies and partnerships to address the scope and scale of challenges
- States, as economic actors, to lead by example at a significant scale by integrating human rights in public procurement and State-owned enterprises (assuming that there is the political will to do so)

65. Participants noted that benchmarking and ranking initiatives, such as the Corporate Human Rights Benchmark,[9] were considered important forces for driving progress, even though all initiatives also found that companies scored particularly poorly with regard to remediation efforts. At the same time, participants noted that the engagement of capital markets to a much larger extent was needed; if Fortune 500 were placed on a human rights index, more people and investors would take notice and base their decisions on that information. Another challenge was how to measure actual impact and company performance, given that benchmarks tended only to show what companies say they are doing, not what they do in practice.

66. One key issue for corporate respect of human rights concerned exercising leverage in business relationships when they are linked to, but not causing or contributing to, human rights abuse. During one discussion, participants explicitly asked how transnational corporations could use leverage to advance access to remedy through business relationships. Reference was also made to the revised ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (see para. 47 above), which calls upon multinational enterprises to use their leverage to encourage their business partners to provide effective means of enabling remediation for abuses of internationally recognized human rights. Participants concluded that:

(a) Collaboration with others (including industry organizations and competitors) is the most important means for strengthening leverage;

(b) The financial services industry plays an important role: engagement can lead to better outcomes;

(c) Companies should "translate" from the language of lawyers to terms that are understood by more people across organizations;

(d) Leverage could be built up-front into contracts, dialogue and training with suppliers and joint venture partners;

(e) Investments should be made in social dialogue and local solutions.

67. During a special session, attention was drawn to experiences of human rights due diligence in investment and supply chains in China, and lessons were shared on

[9] See www.corporatebenchmark.org.

management practices both prior to investments (comprehensive due diligence and feasibility management, which encompasses social and environmental factors) and during investment (establishing and improving due diligence mechanisms on the basis of economic, social and environmental risk assessments).

68. Key initiatives conducted in 2016 and 2017 in which the Guiding Principles were either referenced or used directly as a framework included:

- A social responsibility management system in the information and communications technology industry
- The green aviation initiative and networks
- The Responsible Cobalt Initiative
- The Guidance for Sustainable Natural Rubber[10]
- The revised China Social Compliance 9000 for the textile and apparel industry

69. Another notable initiative that held important lessons for stakeholders with regard to corporate human rights due diligence was the banking agreement reached in the Netherlands on international responsible business conduct. This multi-stakeholder initiative between the banking associations, the Government of the Netherlands, three civil society organizations and two trade unions included a number of working groups set up to look after specific aspects of implementation, one of which gave insights to Forum participants on the issue of enabling remediation. The discussions were relevant beyond the banking sector, in particular because they sought to clarify the terms in the Guiding Principles of "cause", "contribute to" and "directly linked to" and their implications for the responsibility to provide remedy. Participants noted that there was a common tendency to fixate on "cause and contribution situations" in which the Guiding Principles clarified that business enterprises had a responsibility to provide, or contribute directly to, remedy. Less time was allocated to worrying about what to do in a "linkage situation", given that, under the Guiding Principles, businesses do not necessarily have a responsibility to provide remedy, even though they may choose to do so. It was stressed that this gap missed the fundamental point in the second pillar of the Guiding Principles, namely, that remedy, and a business's role in relation to it, is always relevant. A good practice would be considering how to exercise leverage to ensure accountability for any harm caused and how it could be addressed. This would also be an effective way to prevent future harm. Another insight emerging from this discussion was that, although approaches to grievance mechanisms might vary across sectors, even enterprises that often find that their link to human rights risks is primarily through business relationships (as characteristic for many actors in the banking sector) ought to think about such mechanisms. A message that held relevance beyond the banking sector was the need to go beyond simply asking "do you have a grievance mechanism?". More thoughtful and effective approaches were needed.

C. Human rights defenders, civic freedoms and the role of business

70. Trends with regard to persons who speak up against business-related human rights impacts worldwide and the need to ensure better protection of human rights defenders have become a standing item on the agenda of the Forum. Discussions on human rights defenders have also helped feed into the ongoing efforts of the Working Group to develop guidance on this issue.[11] In 2017, participants in the Forum reiterated that human rights defenders were instrumental in identifying actual and potential business-related human rights impacts — which is also a first step towards securing effective remedy. By doing so, defenders also provided access to information about risks and impacts, enabling better corporate human rights due diligence.

[10] See www.ccmc.org.cn/docs/2017-11/20171107204714430892.pdf.

[11] See OHCHR, "Human rights defenders and civic space — the business and human rights dimension", available from www.ohchr.org/EN/Issues/Business/Pages/HRDefendersCivicSpace.aspx.

71. The main session on human rights defenders was opened with one minute of silence to honour all defenders killed in the course of their work. Participants received an update on the work of the Business and Human Rights Resource Centre in tracking cases involving attacks on human rights defenders working on business and human rights issues, which showed that more than 800 attacks had been registered since 2015. Land-intensive industries, such as mining, agriculture and renewables, had witnessed the largest numbers of incidents. Businesses were implicated in different ways, such as in cases of legal harassment involving strategic lawsuits against public participation, or failure to address attacks carried out by government actors and security forces. In other examples, businesses could use their lobbying power to encourage a Government to introduce restrictions on advocacy, or to retaliate against people who raise concerns. Protection and accountability gaps were especially acute in countries where rule of law was weak, but also existed in jurisdictions where courts could be effective. Participants noted that retaliation against defenders had a chilling effect, and restricted the ability of defenders to raise early warnings about business-related impacts. Defenders ended up having to spend their time and limited resources defending themselves and their institutions. Participants pointed out that criminalization of defenders in itself should be a crime, and that prevention of attacks was critical.

72. On a positive note, a growing number of companies and business leaders recognized that protecting, respecting and supporting human rights defenders and civic freedoms in a business context were both a responsibility and ultimately good for society and business itself. Examples of positive actions by companies presented at the Forum included:

- Apparel companies defending union rights
- Companies standing up for lesbian, gay, bi, trans and intersex (LGBTI) persons, including companies joining the recent OHCHR standards of conduct for business in tackling discrimination against LGBTI persons[12]
- Companies addressing xenophobia and anti-migrant narratives

73. Participants in the Forum also heard about efforts of some Governments to more actively prevent and to address risks to human rights defenders in third countries where "their" transnational corporations operate, as in the case of the "Voices at risk" policy in Canada.

74. Key recommendations included the need to ensure that protection of and respect for rights human rights defenders were integrated in national action plans and human rights due diligence processes. Going forward, it was crucial to strengthen the role of human rights defenders in the pursuit of sustainable development and as "justice enablers" in bringing about access to remedy for victims of corporate-related human rights abuse.

D. Corporate respect for human rights and the Sustainable Development Goals

75. One objective of the Forum was to contribute to a greater understanding of the connection between business and human rights and sustainable development. A major backdrop was provided by the embedding of human rights in the Sustainable Development Goals, and the significant role that the private sector envisaged to play in realizing them. While the role of the private sector is crucial, there is a risk of a return to traditional and partial philanthropic approaches by businesses that fail to take into consideration the social and environmental impact of a company's core operations and value chain. Forum speakers stressed that the greatest contribution that most companies could make to socially sustainable development (its "people part") was to embed respect for human rights in all their activities and value chains. The key references included the recommendations addressed by the Working Group to States and businesses on integrating the Guiding

[12] See www.unfe.org/standards.

Principles into the implementation of the Sustainable Development Goals,[13] and a joint statement by a group of civil society organizations along the same lines.[14]

76. Case studies presented to demonstrate the relationship included:

- Efforts by Nestlé, in collaboration with the non-governmental organization Verité, to address forced labour and human rights abuses in the seafood supply chain, showing also the direct contribution to Sustainable Development Goal targets (for example, targets 8.7 and 8.8)
- The multi-stakeholder initiative "Malawi Tea 2020" to ensure a living wage for farm workers, involving companies in the Ethical Tea Partnership, Oxfam and Malawian unions and civil society organizations
- Efforts by Chile to integrate human rights requirements in public procurement processes and the integration of the Sustainable Development Goals in the national action plan on business and human rights

77. The overall takeaways from the discussions included:

- Company-non-governmental organization partnerships to support the Sustainable Development Goals should be founded on transparency and a corporate commitment to respect human rights
- Corporate reporting on contributions made to the Sustainable Development Goals should include information on how risks to persons are addressed
- The Sustainable Development Goals provided a framework for longer-term and more holistic perspective for investors, even though it should also integrate human rights risks and impacts (that is, the "people part")

E. Gender lens

78. Participants in Forum sessions highlighted the fact that women faced unique business-related human rights abuses and subsequent barriers to remedy. The sessions focusing on gender also provided important input to the Working Group and its efforts to develop guidance for integrating a gender lens into the implementation of the Guiding Principles.[15] That women not be considered a homogeneous group was continuously stressed, given that remedies and issues should be addressed taking into account their own specific context. The Working Group and stakeholders called for proactive measures to be taken by both Governments and businesses in order to avoid gender-blind practices, at the risk of reinforcing patriarchal and discriminatory structures if they failed to do so.

79. One issue discussed concerned land-intensive investments and their impact on women, such as:

- The exclusion of women from negotiations and ownership of land
- Unpaid care and domestic work, compounded by displacement and environmental damage
- Changing gender relations in communities owing to the influx of migrant workers or increasing domestic violence

80. Key solutions included the need for companies to involve affected women in the design and evaluation of mitigation and remediation processes, to address the barriers that

[13] OHCHR, "The business and human rights dimension of sustainable development: Embedding 'Protect, Respect and Remedy' in SDGs implementation", information note, 30 June 2017 (available at www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf).

[14] See https://business-humanrights.org/sites/default/files/documents/SDGs-businesshumanrights-openletterSept2017.pdf.

[15] See OHCHR, "Gender lens to the UNGPs" (available at www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx).

women faced when speaking up and submitting complaints, and to give them access to adequate and transformative remedies.

V. Closing plenary and general recommendations

81. **The overall message in the speeches made by speakers during the closing plenary was the recognition that many business enterprises had made progress in implementing the Guiding Principles, even though wider and more comprehensive action by businesses and Governments was urgent.**

82. **Participants in the closing session heard commitments from the Government of Malaysia to develop a national action plan on business and human rights in 2018, and from the CEO of the bank BNP Paribas to withdraw financing of oil and gas extracted from tar sands and of tobacco production because of human rights considerations based on its commitment to the Guiding Principles and other international standards. The United Nations Global Compact reiterated its commitment to prioritize the promotion of human rights in its engagement with the business sector through enhanced learning platforms on how business could meet its responsibility to respect and by promoting the implementation of the Guiding Principles in business activities and value chains.**

83. **Key messages from stakeholders on the way forward included the call made by the indigenous peoples' caucus upon States to ensure rapid progress in realizing the three pillars of protect, respect and remedy, and to integrate the protection of indigenous peoples in their national action plans; to take steps to address the barriers to justice and remedy for business-related human rights impacts experienced by indigenous peoples across the world; and for businesses to step up action both to prevent impacts on indigenous peoples and to meet their responsibility to remediation when indigenous peoples are harmed by business operations.**

84. **Global unions called for collective efforts to scale up awareness and action beyond policy level on the Guiding Principles. In order to achieve meaningful implementation of the Guiding Principles from the perspective of workers around the world, Governments and businesses should address modern slavery and ensure freedom of association, decent wages and safe workplaces. Global framework agreements involving unions were an effective tool that should be employed more widely. All businesses should undertake effective human rights due diligence, while States should take legal and administrative measures to ensure access to remedy for workers and create binding legal frameworks.**

85. **OECD called upon Governments to ensure more effective policy coherence between human rights obligations and business-oriented policies, and to improve access to non-judicial remedy by providing adequate resources to allow national contact points to be effective.**

86. **The United Nations High Commissioner for Human Rights emphasized the urgent need to stand up for human rights. He called upon all stakeholders, in particular States and businesses, to take strong action in combating discrimination, hate and violence, and encouraged civil society actors to continue to fight for the rights of people affected by human rights violations and abuse.**

87. **The Working Group attempted to summarize some of the key messages emerging from Forum discussions in a "2020 road map":**

(a) **Making a commitment to implementing the Guiding Principles is an initial critical step for States and companies to take. This in itself, however, is not sufficient. Concrete short- and long-term action must be taken to apply the "Protect, Respect and Remedy" framework to prevent and address human rights abuse;**

(b) **All States should develop national action plans by means of inclusive processes that involve both businesses and civil society and with a focus on the word "action"; in this regard, the Working Group also noted the need to improve existing**

national action plans during the review process, especially in the case of the third pillar;

(c) **When it comes to providing effective remedies to victims of business-related human rights abuses, the time for talking is over. Existing barriers impeding access to effective remedies are well known, and States must work together to take urgent steps to remove them;**

(d) **Sensitivity should be shown towards the diverse experiences of all rights holders. No one should be discriminated against or excluded on grounds such as race, colour, ethnicity, social origin, sex, sexual orientation, religion, language, disability or migration status;**

(e) **There must be a change in mindset, from a "race to the bottom" to "a race to the top" by injecting human rights into the DNA of businesses and of States' economic policy frameworks. This includes the area of "economic diplomacy" tools. States should lead from the front in creating a regulatory framework that ensures that all businesses prevent, mitigate and remedy the adverse impact of their global footprint on human rights;**

(f) **States should not see human rights as an avoidable "speed breaker" to economic development; rather, human rights should be treated as an essential precondition for sustainable development, in accordance with the pledges that States made when they adopted the Sustainable Development Goals;**

(g) **Threats to human rights and environmental sustainability relating to economic inequalities and climate change should be a matter of urgent concern for States and businesses alike. Transformative changes are needed to address these challenges;**

(h) **Tax evasion or avoidance by business enterprises is another issue that requires the collective attention of States. It should always be recalled that evading or avoiding the payment of taxes undermines a State's ability to mobilize resources to realize human rights;**

(i) **Discrimination and sexual violence against women must be addressed by both States and businesses as a matter of priority;**

(j) **Individuals and communities, including indigenous peoples, have a right to speak up when business operations affect them negatively. While the situation on the ground across the world is deteriorating for defenders, it is nevertheless a positive sign that more businesses are taking steps to respect defenders and to speak up when rights of defenders and civic freedoms are under threat (for example, in relation to LGBTI persons and in countering anti-migration narratives);**

(k) **Business associations should continue to build the capacity of their members in conducting meaningful human rights due diligence. They should also clearly communicate the expectation that any "private" corporate lobbying with Governments does not undermine their "public" commitment to the Guiding Principles;**

(l) **Lawyers too have a vital role in implementing the Guiding Principles: their professional advice to businesses should not cause or contribute to any adverse human rights impacts. Lawyers should also take a proactive role in helping affected individuals and communities to seek access to a full range of effective remedies. The creation of a global network of pro bono lawyers should be explored;**

(m) **Emerging good practice approaches for corporate human rights due diligence should be built upon and scaled up across all regions — the theme of the report of the Working Group to be submitted to the General Assembly at its seventy-third session. It will also be a major focus of the Forum on Business and Human Rights in 2018, to explore what has been working to date and how businesses, Governments and other stakeholders can plug gaps.**